

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

TERRANCE MITCHELL,)	Case No. 1:21-cv-1145
)	
Petitioner,)	JUDGE DAN AARON POLSTER
)	
v.)	MAGISTRATE JUDGE
)	AMANDA M. KNAPP
WARDEN NEIL TURNER,)	
)	<u>ORDER</u>
Respondent.)	
)	

Before the Court is the interim Report and Recommendation of Magistrate Amanda M. Knapp. (“R&R”) [ECF Doc. 10](#). The R&R recommends that the Court deny Petitioner’s motion to advance writ ([ECF Doc. 8](#)), order supplemental briefing on Grounds Five and Six and reassign the case to Judge Helmick who received the assignment of Mr. Mitchell’s initial petition. Magistrate Judge Knapp’s R&R was filed on July 13, 2023 and objections were due by July 27, 2023. On July 26, 2023, Mr. Mitchell filed an objection to the R&R but did not object to all the recommendations from Magistrate Judge Knapp. He objected only to the recommendation that the Court order supplemental briefing on Grounds Five and Six. Mr. Mitchell argues the Government should not be permitted to file supplemental briefing. *See* [ECF Doc. 11](#).

[28 U.S.C. § 636\(b\)\(1\)](#) provides:

Within fourteen days after being served with a copy, any party may serve and file written objections to such proposed findings and recommendations as provided by the rules of court. A judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendation to which objection is made.

The failure to timely file written objections to a magistrate's R&R constitutes a waiver of the right to obtain a *de novo* review of the R&R in the district court. *United States v. Walters*, 638 F.2d 947, 949–50 (6th Cir. 1981); *Thomas v. Arn*, 474 U.S. 140, 149–50 (1985). The failure to file written objections also results in a waiver of the right to appeal. *Thomas v. Arn*, 728 F.2d 813 (6th Cir. 1984), *aff'd*, 474 U.S. 140 (1985).

Here, the time for objection has passed. Mr. Williams *did* file an objection but did not object to two of the recommendations in Magistrate Judge Knapp's R&R.¹ The Court has reviewed Magistrate Judge Knapp's R&R and agrees that Petitioner Mitchell's motion to advance writ should be DENIED and the case should be REASSIGNED to Judge Helmick to whom the petition should have been assigned in the first place. Accordingly, the Court ADOPTS Magistrate Knapp's R & R (ECF Doc. 10) with regard to those two recommendations.

The Court has also reviewed the docket and agrees with Magistrate Judge Knapp that Respondent should be required to supplement its return to include responses to Grounds Five and Six. Although these Grounds most likely do not set forth a proper basis for overturning Mr. Mitchell's conviction², it is reasonable to require the Warden to respond to these Grounds so that they can be fully addressed in Magistrate Judge Knapp's report and recommendation on the merits. Mr. Mitchell objects because he does not think the Warden should be permitted to respond to these Grounds. However, the Court agrees with Magistrate Judge Knapp that the Warden should be required to respond. Mr. Mitchell would not be entitled to habeas relief due to the Warden's omission of a response on these Grounds, so there is no prejudice resulting to him by ordering supplemental briefing. Accordingly, the Court also ADOPTS Magistrate Judge Knapp's

¹ As stated already, it appears that Mr. Mitchell may be objecting to the recommendation that the Court order supplemental briefing.

² Ground Five asserts that a transcript from proceedings is incorrect and Ground Six asserts that Mitchell was not given proper notice of an oral argument scheduled for January 13, 2021.

recommendation that the Court order supplemental briefing as to Grounds Five and Six as follows: Respondent shall file a supplement to the Return of Writ addressing Grounds Five and Six within thirty (30) days; Petitioner may file a supplement to the Traverse, replying to the supplemental Return of Writ within thirty (30) days.

After reviewing Magistrate Judge Knapp's report and recommendation and Mr. Mitchell's objection, the Court ADOPTS Magistrate Judge Knapp's report and recommendation in full. [ECF Doc. 10](#). Mr. Mitchell's motion to advance is DENIED. The Court orders supplemental briefing on Grounds Five and Six—Respondent shall file a supplement to the Return of Writ addressing Grounds Five and Six within thirty (30) days; Petitioner may file a supplement to the Traverse, replying to the supplemental Return of Writ within thirty (30) days. The Clerk is ORDERED to reassign this case to Judge Helmick to whom it should have been assigned.

IT IS SO ORDERED.

Dated: July 28, 2023

s/Dan Aaron Polster

United States District Judge